

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MAHAMAD HUSSEIN SAYIDIN.

**Petitioner,**

v.

JACK WARNER.

### Respondent.

Case No. 2:24-cv-00098-JNW-TLF

**ORDER GRANTING MOTION TO AMEND, MOTION TO SEAL, AND MOTION TO STAY, STRIKING OTHER PENDING MOTIONS AS MOOT**

The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate Judge Theresa L. Fricke. Petitioner has been appointed counsel. Dkt. 19. Currently before the Court is petitioner's motion to amend (Dkt. 24), motion to seal exhibits (Dkts. 25), and motion to stay (Dkt. 27). After review of the motions and the relevant record, the motions are GRANTED.

## BACKGROUND

In January 2024, petitioner, proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 with this Court challenging his custody under a King County Superior Court judgment and sentence. Dkts. 1, 3. Petitioner also filed two motions for appointment of counsel. Dkts. 4, 7. The petition was served and respondent filed a response arguing that the petition was a “mixed petition” – presenting both exhausted and unexhausted claims. Dkt. 8. Respondent asserted that petitioner failed to show “good cause” for failing to exhaust his unexhausted claims as required to

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1 support a stay of proceedings under *Rhines v. Weber*, 544 U.S. 269 (2005); respondent  
2 also argued the Court should give petitioner the option of dismissing his unexhausted  
3 claims and proceeding on his sole exhausted claim or dismissing his entire petition  
4 without prejudice. *Id.* Petitioner subsequently filed a “motion to dismiss unexhausted  
5 claims” (Dkt. 12) and a “motion to amend” (Dkt. 13) in which he appeared to indicate  
6 that he wished to proceed solely on his exhausted claim -- that his right to be present at  
7 trial was violated.

8 By order dated June 7, 2024, the Court directed petitioner to submit a financial  
9 affidavit by June 19, 2024, to allow the Court to properly consider his motions for  
10 appointment of counsel. Dkt. 16. Petitioner failed to submit the financial affidavit by the  
11 deadline and by order dated July 3, 2024, the Court denied the motions to appoint  
12 counsel. Dkt. 17. Petitioner subsequently submitted the financial affidavit. Dkt. 18.

13 On July 11, 2024, the Court issued an order reconsidering and granting  
14 petitioner’s motions to appoint counsel and appointing the Federal Public Defender to  
15 represent petitioner in these proceedings. Dkt. 19. The Court further directed petitioner’s  
16 counsel to file a response to the respondent’s response to the habeas petition (Dkt. 8)  
17 specifically addressing the issue of the “mixed petition” and indicating to the Court  
18 whether petitioner intended to proceed with the pending “motion to dismiss unexhausted  
19 claims” (Dkt. 12) and “motion to amend complaint” (Dkt. 13). *Id.*

20 Petitioner, through counsel, now moves for leave to file an amended petition  
21 (Dkt. 24), to seal the exhibits to the amended petition (Dkt. 25), and to stay and abey  
22 the federal habeas proceedings (Dkt. 27) to allow petitioner to exhaust his unexhausted  
23 claims in state court.

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Respondent indicates he does not oppose the motions to amend or to stay proceedings. Dkt. 28. Respondent also indicates he does not oppose the motion to seal “other than to note that evidence not presented in state court cannot be considered to adjudicate [petitioner’s] grounds for relief.” Dkt. 28 at 3.

## DISCUSSION

## **A. Motion to Amend**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

## **(1) Amending as a Matter of Course**

A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

## **(2) *Other Amendments***

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Although it appears petitioner may no longer be able to amend as a matter of course at this time, respondent does not oppose the motion. Dkt. 28. Further, the Court finds justice requires allowing petitioner to amend. Therefore, petitioner's motion to amend (Dkt. 24) is GRANTED. Petitioner's proposed amended petition (Dkt. 24-1) is hereby deemed filed as petitioner's amended petition. The Clerk is directed to docket the proposed amended petition (Dkt. 24-1), including the sealed exhibits (Dkt. 26) as the amended petition.

## **B. Motion to Seal**

Petitioner also moves to file exhibits 1-3 to petitioner's proposed amended petition under seal. Dkts. 25, 26. Petitioner argues that these documents should be filed

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1 under seal because they consist of medical records containing confidential information  
2 which, if made public, could result in harm to petitioner. *Id.* Respondent also indicates  
3 he does not oppose the motion to seal “other than to note that evidence not presented  
4 in state court cannot be considered to adjudicate [petitioner’s] grounds for relief.” Dkt.  
5 28 at 3.

6 Local Civil Rule 5(g) allows the court to seal documents and other evidence upon  
7 a showing that a party cannot avoid filing a document under seal and a statute, rule, or  
8 prior court order expressly authorizes the party to file the document under seal or a  
9 party files a motion or stipulated motion to seal before or at the same time the party files  
10 the sealed document. LCR 5(g)(1)–(2).

11 The Ninth Circuit has applied a strong presumption of public access to judicial  
12 records. See *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).  
13 A party seeking to file a document under seal must overcome that strong presumption.  
14 *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*,  
15 447 F.3d at 1178). Parties who seek to maintain the secrecy of documents related or  
16 attached to dispositive pleadings “must meet the high threshold of showing that  
17 ‘compelling reasons’ support secrecy.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d  
18 1172, 1180 (9th Cir. 2006) (citing *Foltz*, 331 F.3d at 1136); see also *E. & J. Gallo*  
19 *Winery v. Instituut Voor Landbouw- En Visserijonderzoek*, 2018 WL 4090585, at \*1-2  
20 (E.D. Cal. Aug. 27, 2018) (applying the “compelling reasons” standard to a dispositive  
21 motion). Those compelling reasons must outweigh the competing interests of the public  
22 in having access to the judicial records and understanding the judicial process.  
23 *Kamakana*, 447 F.3d at 1178-79.

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1 Several district courts in the Ninth Circuit "have recognized that the need to  
2 protect medical privacy qualifies as a 'compelling reason' for sealing records, since  
3 medical records contain sensitive and private information about a person's health."  
4 *Williams v. Ely State Prison*, No. 3:24-CV-00022, 2024 WL 3329757, at \*1 (D. Nev. July  
5 8, 2024) (citing *Spahr v. Med. Dir. Ely State Prison*, No. 3:19-CV-0267, 2020 WL  
6 137459, at \*2 (D. Nev. Jan. 10, 2020); *Sapp v. Ada Cnty. Med. Dep't*, No. 1:15-CV-  
7 00594, 2018 WL 3613978, at \*6 (D. Idaho July 27, 2018); *Karpenski v. Am. Gen. Life  
Companies, LLC*, No. 2:12-CV-01569-RSM, 2013 WL 5588312, at \*1 (W.D. Wash. Oct.  
9, 2013)).

10 Here, the exhibits at issue consist of medical records containing sensitive health  
11 information. Balancing the public's need for access to this information against the need  
12 to maintain the confidentiality of these medical records weighs in favor of sealing the  
13 exhibits.

14 Respondent concedes it is appropriate for the Court to consider these records in  
15 the context of considering the petitioner's motion to stay, which is addressed below. But  
16 respondent notes that some (or all) of the documents petitioner seeks to place under  
17 seal do not appear to have been presented to the state court, and as such the Court  
18 would be barred from considering these records under 28 U.S.C. § 2254(d) and 28  
19 U.S.C. § 2254(d)(e)(2) in ultimately deciding the habeas petition. However, the Court  
20 need not make this determination at this time. This issue has not been fully briefed and  
21 it would be premature for the Court to decide this issue on the current record at this  
22 point in the proceedings. Any issues challenging what evidence is properly a part of the  
23 record to be considered by the Court in ultimately deciding the habeas petition should  
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1 be raised by the respondent in their answer to the amended petition and will be decided  
2 by the Court when the petition is fully briefed and ripe for consideration.

3 The motion to seal (Dkt. 25) is GRANTED.

4 **C. Motion to Stay**

5 Petitioner, through counsel, has moved to stay and abey proceedings to allow  
6 petitioner to exhaust his unexhausted claims through a personal restraint petition (PRP)  
7 in state court. Dkt. 27.

8 District courts may use a “stay-and-abeyance” procedure while a petitioner  
9 exhausts his claims in state court. *Rhines v. Weber*, 544 U.S. 269, 275-77; *Calderon v.*  
10 *United States District Court (Taylor)*, 134 F.3d 981, 988 (9th Cir. 1998). Petitioner  
11 contends a stay is proper because he has potentially meritorious claims that have not  
12 yet been exhausted in state court – including claims related to ineffective assistance of  
13 trial counsel and petitioner’s competency to stand trial. Dkt. 27 at 1-2. Petitioner  
14 contends that he can still present these unexhausted claims without procedural bar in a  
15 state court PRP, and that counsel intends to file such a PRP shortly. *Id.* Petitioner’s  
16 counsel also argues that filing a PRP without the assistance of counsel would have  
17 been particularly challenging for petitioner given his struggles with mental health issues  
18 and as a non-native English speaker. *Id.* at 2-3.

19 Respondent has filed a response stating he does not oppose the request to stay  
20 and defers to the Court as to whether such a stay is appropriate. Dkt. 28 at 2-3.

21 After reviewing the relevant record, the motion to stay and abey (Dkt. 27) is  
22 GRANTED. The case is stayed.

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1 Petitioner is directed to file a report every one-hundred and twenty (120) days  
2 informing the Court of the status of petitioner's state proceedings. The first status report  
3 is due on or before **February 18, 2025**, and shall include the state court cause  
4 number(s). If the state court dismisses or resolves petitioner's state court proceedings,  
5 petitioner is directed to inform the Court and file a motion to lift the stay within 30 days  
6 of the state court taking action. Respondent's answer to the amended petition shall be  
7 filed 45 days after the stay is lifted.

8 **D. Petitioner's Pending Previously Filed *Pro Se* Motions**

9 Prior to counsel's appointment, petitioner filed *pro se* a "motion to dismiss  
10 unexhausted claims" (Dkt. 12) and a "motion to amend complaint" (Dkt. 13) in which he  
11 appeared to indicate that he wished to proceed on his sole exhausted claim -- that his  
12 right to be present at trial was violated – and delete his unexhausted claims. Petitioner  
13 was subsequently appointed counsel who filed the current motion to file an amended  
14 complaint which includes several unexhausted claims (Dkt. 25) and motion to stay  
15 proceedings (Dkt. 27) to allow petitioner to exhaust those unexhausted claims. In light of  
16 counsel's appointment and these subsequently filed motions, petitioner's previously filed  
17 *pro se* motions "to dismiss unexhausted claims" (Dkt. 12) and "to amend complaint"  
18 (Dkt. 13) are STRICKEN as moot.

19 **CONCLUSION**

20 For the foregoing reasons, the Court hereby ORDERS:

21 (1) Petitioner's motion to amend (Dkt. 24) is GRANTED. Petitioner's proposed  
22 amended petition (Dkt. 24-1) is hereby deemed filed as petitioner's amended

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1 petition. The Clerk is directed to docket the proposed amended petition (Dkt. 24-  
2 1), including the sealed exhibits (Dkt. 26) as the amended petition.

3 (2) The motion to seal (Dkt. 25) is GRANTED.

4 (3) The motion to stay and abey (Dkt. 27) is GRANTED. The case is stayed.

5 Petitioner is directed to file a report every one-hundred and twenty (120) days  
6 informing the Court of the status of petitioner's state proceedings. The first status  
7 report is due on or before **February 18, 2025**, and shall include the state court  
8 cause number(s). If the state court dismisses or resolves petitioner's state court  
9 proceedings, petitioner is directed to inform the Court and file a motion to lift the  
10 stay within 30 days of the state court taking action. Respondent's answer to the  
11 amended petition shall be filed 45 days after the stay is lifted.

12 (4) Petitioner's *pro se* motions "to dismiss unexhausted claims" (Dkt. 12) and "to  
13 amend complaint" (Dkt. 13) are STRICKEN as moot.

14 Dated this 18th day of October, 2024.

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18 Theresa L. Fricke  
United States Magistrate Judge  
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